

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KYNDRA L OWENS
Claimant

APPEAL NO: 15A-UI-06295-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PHYSICIANS CLINIC MEDICAL
Employer

OC: 04/26/15

Claimant: Appellant (4)

Section 96.5-7 – Vacation Pay

STATEMENT OF THE CASE:

Kyndra L. Owens (claimant) appealed a representative's May 20, 2015 decision (reference 02) that concluded the claimant was ineligible for benefits for the two weeks ending May 9, 2015 due to receipt of vacation pay. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-06296-LDT. The claimant participated in the hearing. Susan Mikles appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant's vacation pay properly allocated and deducted?

FINDINGS OF FACT:

The claimant worked full time as a clinical assistant at an hourly rate of \$15.83. Her normal schedule was to work eight hours per day, Monday through Friday. Her last day of work was April 27, 2015, which was a Monday. She worked a partial day and was paid for 3.6 hours of work on that date.

The claimant established an unemployment insurance benefit year effective April 26, 2015. A notice of the filing of the claim was sent to the employer, and the employer made a timely response. On the response the employer checked that the claimant had received vacation pay, specifically 90.89 hours in her paid time off / "PTO bank", with a gross value of \$1,438.41. The employer did not fill in the spaces on the form to designate the date from and date to it wished the vacation to be applied, despite the fact that the form bore the warning that "failure to provide the time period to which the vacation pay applies shall result in the entire amount being applied to the 5 working days following the last day worked."

After the claimant established her claim year, she filed weekly continued claims for three weeks including the week ending May 2, 2015, for which she reported only \$60.00 in earnings and for which she received her full weekly benefit amount of \$428.00.

REASONING AND CONCLUSIONS OF LAW:

If vacation pay was or will be received by the claimant and was properly allocated to a period of unemployment, it must be deducted from the claimant's unemployment insurance benefit eligibility; the vacation pay paid or owed "shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted." Iowa Code § 96.5-7.

Rule 871 IAC 24.16(1) and (3) provide:

If the employer properly notifies the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, a sum equal to the wages of the individual for a normal workday shall be applied to the first and each subsequent workday of the designated vacation period until the amount of the vacation pay is exhausted. For the purposes of this rule, rule 871—24.13(96), and rule 871—24.17(96), the term "vacation pay" shall include paid time off and annual leave payments.

If the employer fails to properly notify the department within ten days after the notification of the filing of the claim that an amount of vacation pay, either paid or owed, is to be applied to a specific vacation period, the entire amount of the vacation pay shall be applied to the one-week period starting on the first workday following the last day worked as defined in subrule 24.16(4). However, if the individual does not claim benefits after layoff during the normal employer workweek immediately following the last day worked, then the entire amount of the vacation pay shall not be deducted from any week of benefits.

Emphasis added.

In its notification to the Agency of the claimant's receipt of vacation pay, the employer did not effectively designate that the vacation pay (including the PTO) was to be applied to a specific period. Therefore, it must all be applied to the one-week period beginning April 27 and ending May 1, 2015. The claimant therefore received sufficient wage, in the form of the vacation/PTO payout, attributable to that week, so that she has no remaining eligibility for that week. However, because the employer did not properly designate the period beyond that week to which it wished that payout to be applied, there is no vacation/PTO income attributable to weeks after May 2, 2015.

DECISION:

The representative's May 20, 2015 decision (reference 02) is modified in favor of the claimant. The vacation pay was not correctly deducted. Vacation pay applied only to the week ending May 2, 2015. Benefits are denied for that week as the income attributable to that week exceeds the claimant's weekly benefit amount. Effective May 3, 2015, benefits are allowed, provided the claimant is otherwise eligible

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css